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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,476	01/24/2002	Craig A. Schell	P-TN-2547	3550

7590

11/14/2003

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EXAMINER

TRAN, LOUIS B

ART UNIT

PAPER NUMBER

3721

DATE MAILED: 11/14/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/057,476

Applicant(s)

SCHELL ET AL.

Examiner

Louis B Tran

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 October 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 and 7-32 is/are pending in the application.
- 4a) Of the above claim(s) 1, 2 and 7-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This action is in response to applicant's amendment, Paper No. 12, received on 10/17/03. Applicant's cancellation of claims 4-6 in Paper No. 12 is acknowledged.

### ***Election/Restrictions***

2. This application contains claims 1,2,7-32 drawn to an invention nonelected without traverse in Paper No. 8. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fa et al. (5,785,228) in view of Foster et al. (5,823,395).

With respect to claim 3, Fa et al. teaches the use of a fastener tool comprising a housing a magazine 5 connected to the housing for storing a fastener, a driving mechanism disposed within the housing for driving the fastener into a workpiece, a contact trip 14 assembly slidably mounted to the housing and movable when a user pushes the housing towards the workpiece, a trigger assembly pivotally attached to the housing for activating the driving mechanism, said trigger assembly being rotatable relative to the housing about a first axis, said trigger assembly comprising a main trigger 10 pivotally attached to the housing, and a supplemental trigger 12 pivotally attached to

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the main trigger, said supplemental trigger being movable by the contact trip assembly, said driving mechanism being activated only when the user rotates the main trigger and the contact trip assembly moves the supplemental trigger but does not show a trigger lock disposed between the housing the trigger assembly, the trigger lock being rotatable about a second axis substantially perpendicular to the first axis between a first position limiting the pivoting range of the trigger assembly relative to the housing for preventing the trigger assembly from activating the driving mechanism and a second position not preventing the trigger assembly from activating the driving mechanism position, the trigger lock having a handle for moving the trigger lock between the first and second positions, said handle being rotatable with the trigger lock about the second axis

However, Foster et al. teaches a trigger lock disposed between the housing the trigger assembly, the trigger lock being rotatable about a second axis substantially perpendicular to the first axis between a first position limiting the pivoting range of the trigger assembly relative to the housing for preventing the trigger assembly from activating the driving mechanism and a second position not preventing the trigger assembly from activating the driving mechanism position, the trigger lock having a handle for moving the trigger lock between the first and second positions, said handle being rotatable with the trigger lock about the second axis, as in column 7 line 30, relative to the housing for the purpose of safe operation as in column 1, lines 5-31.

Therefore, it would have been obvious to one having ordinary skill in the art to provide Fa et al. with a trigger lock with a specific axis orientation in order to provide safe operation.

***Conclusion***

5. Applicant's remarks have been fully considered but are deemed moot in view of the new grounds of rejection.

In response to Applicant's argument that Foster et al. is nonanalogous art, it has been held that the determination that a reference is from a nonanalogous art is twofold. First, we decide if the reference is within the field of the inventor's endeavor. If it is not, we proceed to determine whether the reference is reasonably pertinent to the particular problem with which the inventor was involved. *In re Wood*, 202 USPQ 171, 174. In the instant case, Foster et al. is certainly reasonably pertinent to the problem of specific trigger lock designs.

For the reasons above, the grounds of rejection are deemed proper.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of


the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis B Tran whose telephone number is 703-305-0611.

The examiner can normally be reached on 8AM-6PM Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on 703-308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.



**JOHN SIPOS**  
**PRIMARY EXAMINER**

lbt